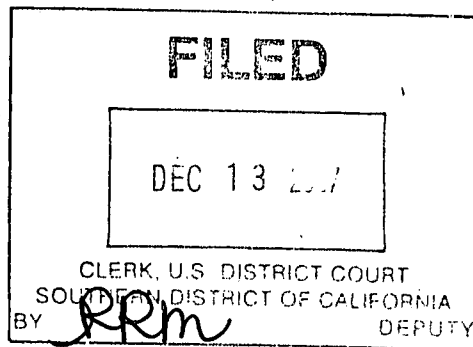


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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JAMES MICHAEL DUKE (1),

15 Defendant.

Magistrate Case No. 07MJ8941

16
17 **STIPULATION OF FACT AND JOINT**
18 **MOTION FOR RELEASE OF**
19 **MATERIAL WITNESS(ES) AND**
20 **ORDER THEREON**

(Pre-Indictment Fast-Track Program)

21 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
22 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and David D.
23 Leshner, Assistant United States Attorney, and defendant JAMES MICHAEL DUKE, by and
24 through and with the advice and consent of defense counsel, Francisco Sanchez, Jr., that:

25 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
26 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
27 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
28 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
§ 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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DDL:mg:11/27/07

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **December 21, 2007**.

6 4. The material witness, Faustino Jimenez De La Cruz, in this case:

7 a. Is an alien with no lawful right to enter or remain in the United States;

8 b. Entered or attempted to enter the United States illegally on or about
9 November 20, 2007;

10 c. Was found in a vehicle driven by defendant at the Calexico West, California
11 Port of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that he was
12 an alien with no lawful right to enter or remain in the United States;

13 d. Was having others pay on his behalf \$4,000 to others to be brought into the
14 United States illegally and/or transported illegally to his destination therein; and,

15 e. May be released and remanded immediately to the Department of Homeland
16 Security for return to his country of origin.

17 5. After the material witnesses are ordered released by the Court pursuant to this
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
22 substantive evidence;

23 b. The United States may elicit hearsay testimony from arresting agents
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
26 of (an) unavailable witness(es); and,

27 //

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to his country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT
15 United States Attorney


16 Dated: 12/13/07

17 
for DAVID D. LESHNER
Assistant United States Attorney

18 Dated: 12-12-07

19 
FRANCISCO SANCHEZ, JR.
Defense Counsel for James Michael Duke

20
21 Dated: 12-12-07

22 
JAMES MICHAEL DUKE
23 Defendant
24
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27
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ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to his country of origin.

SO ORDERED.

Dated: 12/13/07


United States Magistrate Judge